

Turkish Constitutional Court: Monitoring Employee E-mail Accounts Does Not Breach Privacy Rights

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The Turkish Constitutional Court has recently published a decision where it held that an employer monitoring an employee's institutional email account and using correspondence in court did not violate the employee's constitutional rights. The court held that the employer had monitored these accounts prudently and with just cause, since it was done to verify allegations that the employee had breached corporate regulations. It noted that monitoring had not gone beyond verification purposes and content of the correspondence was not made public.

In the case at hand, an employee's spouse alleged an affair among employees to a senior manager. The spouse submitted copies of e-mail correspondence to support her claim. The employer terminated the related employees on the basis of Article 25 of Labor Law No. 4857, which addresses immoral and bad-faith acts. The terminated employees filed a re-employment lawsuit in 2012, arguing their employment agreements were wrongfully terminated because the employer monitored their e-mail accounts contrary to their constitutional rights to privacy and communication.

The re-employment lawsuit was rejected in 2013 on the grounds that the applicants made personal correspondence from their institutional e-mail accounts within working hours, including obscene content. The court held that these factors made it impossible for the employer to maintain the employment relationships. The rejection decision was also upheld by the appellate court. However, the terminated employees continued to pursue the matter before the Constitutional Court.

The Constitutional Court held that terminating the employment agreements upon monitoring their institutional e-mail accounts did not violate the right to privacy (Article 20 of the Constitution) or the right to communication (Article 22 of the Constitution). The court reasoned:

- The relevant employment agreements required the terminated employees to comply with all corporate regulations, including Basic Company Regulation and an Information Security Undertaking.
- Sending explicit content from an institutional e-mail account violates the Basic Company Regulation, which requires employees to maintain professional relationships.
- The Information Security Undertaking prohibits personal use of company computers and institutional e-mail accounts, specifically warning employees that e-mail correspondences and communication might be monitored when needed.
- The employer only monitored the e-mail accounts to confirm the spouse's claim about violations of the employment agreements. Therefore, just cause existed, together with a proportional response.
- The proceedings did not reveal the terminated employees' private lives and the privacy of their communications weren't breached.

The Constitutional Court's decision dated 24 March 2016, with application number 2013/4825, was published in Official Gazette number 295708 on 10 May 2016. Please see this [link](#) for the full text of the Constitutional Court's decision (only available in Turkish).

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